Supreme Court, U.S.
FILED
JUL 25 1996
CLERK

(5)

No. 95-1503

In The

Supreme Court of the United States

October Term, 1995

SHERIFF RICHARD MACK,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

JOINT APPENDIX

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RELEVANT DOCKET ENTRIES

U.S. District Court
U.S. District Court for the District of Arizona (Tucson)
CIVIL DOCKET FOR CASE # 94-CV-113

Mack v. USA	Filed: 02/28/94
Assigned to: Judge John M. Roll	Nature of suit: 440
Demand: $0000	
Lead Docket: None	Jurisdiction: US Defendant

Cause: 28:1331 Federal Question: Other Civil Rights

RICHARD MACK, Sheriff Graham Co, AZ pla	David T. Hardy Stephen P. Halbrook
UNITED STATES OF AMERICA dft	Don B. Overall, esq. Sandra M. Schraibman

2/28/94	1	COMPLAINT FILED for Declaratory Judgment; prel & perm inj; AND SUMMONS ISSUED
2/28/94	2	MOTION for preliminary injunction by plaintiff
3/23/94	11	RESPONSE by defendant USA to mtn for preliminary injunction by plaintiff
4/4/94	22	DECLARATION by plaintiff Richard Mack
4/6/94	25	REPLY by plaintiff to response to motion for preliminary injunction by plaintiff
4/21/94		LODGED amended complaint by plaintiff

4/21/94	30	NOTICE by plaintiff of suggestion for consolidation of hearing on merits
5/6/94	32	MOTION dismiss amended complaint by defendant USA
5/12/94	34	RESPONSE by plaintiff to motion tc dismiss amended complaint by defendant USA
5/31/94	38	MINUTE ENTRY Judge inits: JMR Court Reporter: Chris Wright. Hearing held. Richard Mack sworn and examined. Court takes under advisement on 5/31/94 the motion for preliminary injunction by plaintiff.
6/28/94	41	ORDER by Judge John M. Roll granting in part the motion for preliminary injunction by plaintiff and the clerk of the court is dir to enter a jdg declaring 18:922(s)(2) to be unconstitutional; defendant USA permanently enjoined from further enforcing 18 USC 922(s)(2); and that case is dismissed
7/13/94	43	MOTION to alter by defendant USA judgment
7/20/94	47	RESPONSE by plaintiff to motion to alter judgment by defendant USA
8/1/94	48	REPLY MEMORANDUM IN SUPPORT by defendant USA to motion to alter by defendant USA judgment
8/24/94	50	ORDER by Judge John M. Roll denying motion to alter by defendant USA judgment
10/21/94	55	NOTICE OF APPEAL by USA from District Court

11/3/94	56	NOTICE OF CROSS APPEAL by plaintiff from District Court
11/22/94	58	REPORTER'S TRANSCRIPT of proceedings on 5/31/94

Declaration of Sheriff Richard Mack
[filed April 4, 1994]

[caption omitted]

Plaintiff Sheriff Richard Mack declares and states:

1. I am sheriff of, and reside in, Graham County, Arizona, having been elected by the citizens of that county in 1988 and since re-elected.

2. The office of sheriff is created by Article 12, §3 of the Constitution of Arizona; its duties are fixed by Arizona Revised Statutes, Title 11; its budget allocations are fixed by the County Board of Supervisors.

3. I am, for purposes of 18 U.S.C. §922(s), the "chief law enforcement officer" of Graham County. Under that statute, I would accordingly be required to make "reasonable" investigation of "available" records to determine if any person purchasing a handgun from a licensed dealer is precluded from receiving or possessing that arm. I was, several weeks ago, advised by the County Attorney that I am indeed obligated to perform the background checks. [see attachment A]. There are to my knowledge 35 licensed firearms dealers in Graham County.

4. I have undertaken background checks of the citizens of Graham County, as required by 18 U.S.C. §922(s), involuntarily and under protest. During the first four weeks, criminal record checks has yet to show a single "hit." The entire effect of 18 U.S.C. §922(s) in this county has been to cause a total and complete waste of time and effort.

5. I can briefly state what records might be relevant to determining whether a person can possess firearms

under State and Federal law. Whether all these are "available," and whether a failure to examine them would be "reasonable" or "unreasonable" within the meaning of the law I cannot guess. The relevant records would include:

NCIC: These records are electronically retrievable at my office. For the most part, however, they only reflect outstanding warrants.

ACJS: These records are also retrievable. They do include records of convictions, but only from Arizona courts. Many residents of Graham County have moved here from out of state. Further, the information required to be submitted under 18 U.S.C. §922(s) does *not* include two of the most important data needed for an accurate search of this system – the social security number and place of birth. Finally, these records would not reflect whether the person has received a restoration of civil rights following conviction. Under Arizona law, civil rights are automatically restored following certain convictions, and in other cases such restoration may be granted by the court.

Relief from disabilities: The Federal law also excludes from its prohibitions persons who have received a "relief from disabilities" from the Treasury Department. I am not sure how this could be determined, but expect it would require long-distance calls to Treasury headquarters in Washington, D.C.

County Court Criminal Records: These could be hand-searched to determine the nature of the offense and whether a non-automatic restoration of civil rights had been granted. The records for Graham County could be researched

in Safford; should the records be found in another county access would require somewhere between one and six hours' driving time each way.

State Hospital Records: The records of the State Hospital, in Phoenix, would be the only state-wide record of persons who have been committed to institutions and are thus forbidden to possess firearms under Federal law. Accessing these would require four hours' driving time; I anticipate the Hospital would refuse to permit examination in any event.

County Court Civil Records: Federal law also prohibits ownership by anyone ever adjudicated a "mental defective", and State law prohibits possession by a person found a danger to himself or to others. To determine if these findings have been made would require examination of county court civil files. As with the county criminal files, this might require anywhere from a few minutes to six hours' driving time in addition to looking up the person's name and, if they are shown, obtaining and examining the civil files.

Military Service Records: Federal law prohibits ownership by any person given a dishonorable discharge. I have no idea as how or of whom I could inquire to determine whether a resident of Graham County had received such a discharge.

Illegal Alien Status: Federal law prohibits ownership by aliens unlawfully in the United States. Again, I have no idea as to how I could make "reasonable" investigation into this possibility.

Drug Use: Federal law prohibits ownership by anyone who is an unlawful user of a controlled substance. "Reasonable" investigation might include access to a wide variety of law enforcement and misdemeanor court records, as well as medical and drug treatment records.

Renunciation of citizenship: Federal law precludes firearms ownership by anyone who has renounced their citizenship. Apart from the possibility that the State Department maintains records on this, I have no idea of how to investigate this unlikely possibility.

6. I received and have reviewed the "Open Letter to State and Local Law Enforcement Officials" which has since been attached to the government's brief. I found that its discussion of 18 U.S.C. §922(s) shed no useful light on what records must be checked to comply with that statute. It tells me that the law "anticipates some minimal effort" to check criminal records, but then suggests in a rural area "little or no research" may be needed. As to other records, it states that I should run down indications from the criminal record search that the person is "possibly an unlawful user of controlled substances or has had mental health problems," and that mental health records could also be searched "if accessible." The Open Letter advises me that every agency "will have to set its own standards" on what is reasonable and available, which is of no aid at all. Frankly, I regard the Open Letter as a Washington bureaucrat's abdication of responsibility rather than as guidance to a law enforcement official who must comply.

7. I am told that the government has argued that "reasonable effort may mean no effort" if I have higher

law enforcement priorities. Based on my inability to get a single "hit" in four weeks of labor, I would regard background checks as the lowest imaginable priority. Standing on the corner and warning random passers-by against drugs might have a greater impact on crime in Graham County; it certainly could not have had less. At the same time, the text of 18 U.S.C. §922(s) seems to require that I perform criminal background checks as the minimum, whether or not I have higher priorities, and this is restated in the Open Letter.

8. Depending upon what is "reasonable" and what records are meant to be "available" under the terms of the law, a background check might require anywhere from a man-hour to several man-days. With 35 licensed firearm dealers in Graham County, I may receive several requests per day. Under 18 U.S.C. §922(s), I am subject to a five-day deadline on each.

9. I have in my office an undersheriff, one detective, a patrol sergeant, and nine deputies for active patrol. These must provide 24 hour law enforcement for 4,500 square miles under my jurisdiction, occupied by 28,000 persons. By my calculation, we average 1.5 deputies on patrol at any given moment, for this entire area. Between the necessity of responding to actual calls, these are hard put to provide routine patrol. Until recently, I performed our Drug Abuse Resistance Education duties myself, simply so that we would not have to take a deputy off patrol to carry it out. If I am now compelled to perform background checks of our residents, it will have to be done by pulling deputies off patrol. For a large department, removing one deputy from patrol may not be a burden.

For the 28,000 residents of Graham County it means an 11% reduction in law enforcement protection.

10. I would not voluntarily undertake the labor mandated for me by 18 U.S.C. §922(s). The Arizona courts have held that a sheriff may not order a deputy to undertake an illegal or unconstitutional act. Two of my deputies have already come forward to indicate that they view the background checks required as an illegal duty and, if assigned to do them, would refuse on the basis of those Arizona rulings. 18 U.S.C. §922(s) thus puts me in the position, should I attempt to delegate the duty to check, of having to initiate disciplinary proceedings against other State employees, and of issuing orders which both I and the deputy agree are illegal.

11. It is necessary to point out that an Arizona county is very much a subordinate of the State, with narrowly limited powers. Under Arizona law a county official is personally liable if he expends county funds without being able to "point to" a provision of State statute authorizing the expenditure. The duties assigned to me by 18 U.S.C. §922(s) have never been accomplished by our sheriffs. We have no mechanism for carrying them, or anything resembling them, out. I have no provision in a budget authorizing the required expenditures. To the extent I do not carry out 18 U.S.C. §922(s), I am personally liable to a criminal prosecution. To the extent I do carry out 18 U.S.C. §922(s), I may be personally and civilly liable. Both these liabilities will arise on February 28, 1994, and continue whether I am in or out of office.

12. In summary, if preliminary relief is not granted I will be harmed by being forced to speculate at my risk

what 18 U.S.C. §922(s) means by a "reasonable" inquiry and "available" records; by being required to perform uncompensated and involuntary labor myself, or undertake legally unjustified disciplinary actions against fellow State employees if I delegate it; and by exposure to a dilemna of personal civil or criminal liability. The citizens of Graham County will be harmed by a significant reduction in patrol strength and the availability of law enforcement personnel for crime prevention and response. None of these harms can be compensated, and all are irreparable once incurred.

I, Sheriff Richard Mack, declare under penalty of perjury that the above is true and correct.

/s/
Sheriff Richard Mack

U.S. Department of Justice [SEAL]

Office of Justice Programs

Bureau of Justice Assistance

[LOGO] **BUREAU OF JUSTICE ASSISTANCE**
Fact Sheet

Fiscal Year 1993 Review of
State Formula Grant Strategies

BUREAU OF JUSTICE ASSISTANCE REVIEW HIGHLIGHTS:

___ All States will comply with local passthrough requirement, with 41 (82 percent) of the States providing more to local units of government than required by statute.

___ States have allocated $42,374,216 more to local units of government than required by statute ($259,554,083 allocated versus $217,179,867 required).

___ Locally implemented projects will receive 65 percent of the formula program funding.

___ Thirty-one States (55.35 percent) are using 5 percent or less of their funds for administration.

___ A total of $26,252,114 has been designated as set-aside for criminal justice records improvement programs.

Introduction

The Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant Program, authorized by the Anti-Drug Abuse Act of 1988, is administered by the Bureau of Justice Assistance (BJA), Office of Justice Program (OJP), Department of Justice. This program is designed to assist States and local units of government in carrying out specific programs that offer a high probability of improving the functioning of the criminal justice system. Special emphasis is placed on assisting nationwide and multijurisdictional projects in controlling the drug and violent crime problem, as well as those efforts that are advocated in the National Drug Control Strategy.

In Accordance with Sec. 501(b) of the Act, States may award formula grant funds to State agencies and units of local government to enforce State and local laws that establish offenses similar to offenses established in the Controlled Substances Act (21 U.S.C. 801 *et seq.*) and improve the functioning of the criminal justice system, with emphasis on violent crime and serious offenders. Grants may provide personnel, equipment, training, technical assistance, and information systems for more widespread apprehension, prosecution, adjudication, detention, and rehabilitation of persons who violate such laws and for providing assistance (other than compensation) to the victims of such crimes.

Section 506(a) of the Act requires that at least 80 percent of the total appropriation be allocated for the formula grant program. The appropriation for fiscal year 1993 remained at $473,000,000. After reserving $50,000,000 for discretionary programs, a balance of $423,000,000,

representing 89.42 percent of the total appropriation, remained for the formula grant program. This amount is divided among the 50 States, five Territories, and the District of Columbia. Each entity receives a base amount of 0.25 percent of the total formula allocation of $500,000, whichever is greater (the base amount for fiscal year 1993 was $1,057,500). The remaining funds are allocated on the basis of each State's relative share of the Nation's total population. Although the average allocation was $7,553,571, actual funding ranged from a high of $44,349,000 for California to a low of $1,203,000 for the Virgin Islands. American Samoa and the Northern Mariana Islands are considered as a single unit for funding purposes and receive a total allocation of $1,186,000 (American Samoa – $794,620; Northern Mariana Islands – $391,380).

Application Submission and Review Process

The Anti-Drug Abuse Act of 1988 established specific timeframes by which formula grant funds must be awarded. Within 60 days after the enactment of BJA's annual appropriation, the States are required to submit an application and comprehensive statewide strategy to the BJA. The fiscal year 1993 funding cycle established December 7, 1992, as the deadline for the States' application submission. The legislation also mandates that BJA conduct a full review and approve or deny the application within 45 days of receipt of a State's complete submission. These reviews require multi-level coordination among the offices within OJP to ascertain the State's compliance with regulations and legislative mandates in addition to an indepth assessment of data and compilation of the strategy's information into a summary format (exhibit 1).

EXHIBIT 1

Edward Byrne Memorial State and Local Law Enforcement Assistance Program

Formula Grant Program $423,000,000

State	Allocation	Received	Dir. Signed	Awarded
Alabama	$6,884,000	12/03/92	01/13/93	01/25/93
Alaska	1,870,000	12/07/93	04/09/93	04/19/93
American Samoa	794,620	12/09/92	01/25/93	02/02/93
Arizona	6,401,000	12/02/92	01/13/93	01/25/93
Arkansas	4,438,000	12/14/92	01/28/93	01/28/93
California	44,349,000	12/02/92	01/14/93	01/26/93
Colorado	5,870,000	12/10/92	01/26/93	02/03/93
Connecticut	5,747,000	12/08/92	02/03/93	02/11/93
Delaware	2,027,000	12/09/93	01/25/93	02/02/93
District of Columbia	1,910,000	12/03/93	02/22/93	03/02/93
Florida	19,977,000	12/07/92	01/25/93	02/02/93
Georgia	10,495,000	12/03/92	01/25/93	02/02/93
Guam	1,247,000	12/09/92	06/30/93	07/09/93
Hawaii	2,675,000	12/07/92	02/03/93	02/11/93
Idaho	2,538,000	12/07/92	01/14/93	01/26/93
Illinois	17,506,000	12/07/92	01/15/93	01/27/93
Indiana	9,052,000	12/08/92	02/04/93	02/12/93
Iowa	5,040,000	11/30/92	01/08/93	01/19/93
Kansas	4,613,000	12/08/92	01/11/93	01/21/93
Kentucky	6,349,000	12/07/92	01/28/93	02/05/93
Louisiana	7,117,000	12/02/92	01/08/93	01/19/93
Maine	2,817,000	12/07/92	02/09/93	02/18/93
Maryland	7,983,000	12/09/92	02/17/93	02/25/93
Massachusetts	9,602,000	12/07/92	01/25/93	02/02/93
Michigan	14,407,000	12/11/92	02/17/93	02/25/93
Minnesota	7,373,000	12/04/92	01/25/93	02/02/93
Mississippi	4,751,000	12/07/92	01/26/93	02/03/93
Missouri	8,408,000	12/07/92	01/26/93	02/03/93
Montana	2,209,000	12/07/92	01/27/93	02/04/93
Nebraska	3,328,000	12/07/92	02/17/93	02/25/93
Nevada	2,887,000	12/07/92	02/17/93	02/25/93
New Hampshire	2,632,000	12/08/92	01/14/93	01/26/93
New Jersey	12,115,000	01/08/93	03/04/93	03/12/93
New Mexico	3,283,000	12/08/92	02/22/93	03/02/93
New York	26,790,000	12/10/92	02/11/93	02/22/93
N. Mariana Islands	391,380	12/07/92	04/07/93	04/15/93
North Carolina	10,658,000	11/30/92	01/14/93	01/26/93
North Dakota	1,982,000	12/01/92	01/14/93	01/26/93
Ohio	16,645,000	12/07/92	01/15/93	01/27/93
Oklahoma	5,582,000	12/07/92	02/17/93	02/25/93
Oregon	5,221,000	12/07/93	03/04/93	03/12/93
Pennsylvania	18,102,000	12/09/92	03/02/93	03/10/93
Puerto Rico	6,076,000	12/07/92	01/25/93	02/02/93
Rhode Island	2,488,000	11/30/92	01/14/93	01/23/93
South Carolina	6,130,000	12/01/92	01/27/93	02/04/93
South Dakota	2,059,000	12/02/92	02/03/93	02/11/93
Tennessee	8,115,000	12/10/92	02/03/93	02/11/93
Texas	25,780,000	12/07/92	01/08/93	01/19/93
Utah	3,580,000	12/10/92	02/16/93	02/24/93
Vermont	1,865,000	12/09/92	03/02/93	03/10/93
Virgin Islands	1,203,000	12/03/92	01/15/93	01/27/93
Virginia	10,015,000	12/08/92	01/26/93	02/03/93
Washington	8,208,000	12/08/92	01/19/93	01/28/93
West Virginia	3,624,000	12/09/93	02/03/93	02/11/93
Wisconsin	8,118,000	12/07/92	02/03/93	02/11/93
Wyoming	1,713,000	12/08/92	01/27/93	02/04/93
*TOTAL	$423,000,000			

Although submissions from all 56 entities were reviewed within the required 45-day period, award dates may reflect delays due to incomplete applications.

Key Findings

___ Population fluctuations continue to alter States' allocation.

State population figures, based on the Bureau of Census estimates as of July 1, 1991, revealed significant fluctuations in population, thus altering each State's relative share of the Nation's total population. Because population share is the primary determinant for funding allocations, fifty-five of the entities experienced some variance in funding level for fiscal year 1993. Twenty of the States (35.71 percent) received an increase in funding, which ranged from $7,000 for Delaware to $301,000 for California. Conversely, 35 States (62.50 percent) experienced a decline in funding, with New York encountering the greatest decrease at $256,000. Only Wyoming's funding remained static at $1,713,000 for both fiscal year 1992 and fiscal year 1993 (exhibit 2).

EXHIBIT 2

Comparison of Funding Between Fiscal Years 1992 and 1993

State	FY 1992 Allocation	FY 1993 Allocation	Funding Difference
Alabama	$6,894,000	$6,884,000	-10,000
Alaska	1,852,000	1,870,000	18,000
American Samoa	795,960	794,620	-1,340
Arizona	6,352,000	6,401,000	49,000
Arkansas	4,453,000	4,438,000	-15,000
California	44,048,000	44,349,000	301,000
Colorado	5,817,000	5,870,000	53,000
Connecticut	5,806,000	5,747,000	-59,000
Delaware	2,020,000	2,027,000	7,000
District of Columbia	1,934,000	1,910,000	-24,000
Florida	19,747,000	19,977,000	230,000
Georgia	10,416,000	10,495,000	79,000
Guam	1,250,000	1,247,000	-3,000
Hawaii	2,658,000	2,675,000	17,000
Idaho	2,512,000	2,538,000	26,000
Illinois	17,570,000	17,506,000	-64,000
Indiana	9,066,000	9,052,000	-14,000
Iowa	5,069,000	5,040,000	-29,000
Kansas	4,637,000	4,613,000	-24,000
Kentucky	6,381,000	6,349,000	-32,000
Louisiana	7,154,000	7,117,000	-37,000
Maine	2,831,000	2,817,000	-14,000
Maryland	7,965,000	7,983,000	18,000
Massachusetts	9,749,000	9,602,000	-147,000
Michigan	14,485,000	14,407,000	-78,000
Minnesota	7,378,000	7,373,000	-5,000
Mississippi	4,775,000	4,751,000	-24,000
Missouri	8,449,000	8,408,000	-41,000
Montana	2,212,000	2,209,000	-3,000
Nebraska	3,338,000	3,328,000	-10,000
Nevada	2,794,000	2,887,000	93,000
New Hampshire	2,660,000	2,632,000	-28,000
New Jersey	12,224,000	12,115,000	-109,000
New Mexico	3,246,000	3,263,000	17,000
New York	27,046,000	26,790,000	-25,600
N. Mariana Islands	392,040	391,380	-660
North Carolina	10,663,000	10,658,000	25,000
North Dakota	1,980,000	1,962,000	-18,000
Ohio	16,727,000	16,645,000	-82,000
Oklahoma	5,602,000	5,582,000	-20,000
Oregon	5,163,000	5,221,000	58,000
Pennsylvania	18,221,000	18,102,000	-119,000
Puerto Rico	6,145,000	6,076,000	-6,900
Rhode Island	2,507,000	2,488,000	-19,000
South Carolina	6,094,000	6,130,000	36,000
South Dakota	2,063,000	2,059,000	-4,000
Tennessee	8,103,000	8,115,000	12,000
Texas	25,596,000	25,780,000	184,000
Utah	3,546,000	3,580,000	34,000
Vermont	1,870,000	1,865,000	-5,000
Virgin Islands	1,205,000	1,203,000	-2,000
Virginia	9,996,000	10,015,000	19,000
Washington	8,088,000	8,208,000	120,000
West Virginia	3,648,000	3,624,000	-24,000
Wisconsin	8,124,000	8,118,000	-6,000
Wyoming	1,713,000	1,713,000	0
TOTAL	$423,000,000	$423,000,000	

___ Administrative funding allocations have increased.

Each State or Territory may use up to 10 percent of its allocation for the administration of the grant program. BJA encourages States to use the necessary resources, within the 10 percent, for proper program administration. Analysis indicates a slight increase in the amount of money being used for administration (5.95 percent for fiscal year 1993 versus 5.61 percent for fiscal year 1992).

Thirty-one States (55.35 percent) will use 5 percent or less of their funds for administrative purposes; however, 25 States (44.64 percent) anticipate using up to 10 percent of their allocation for administration. It should be noted that the primary reason for using administrative funds in excess of 5 percent was to support enhanced evaluation and monitoring efforts (exhibits 3 and 4).

EXHIBIT 3

Administrative Funds
Percent of States' Allocation—Fiscal Year 1993

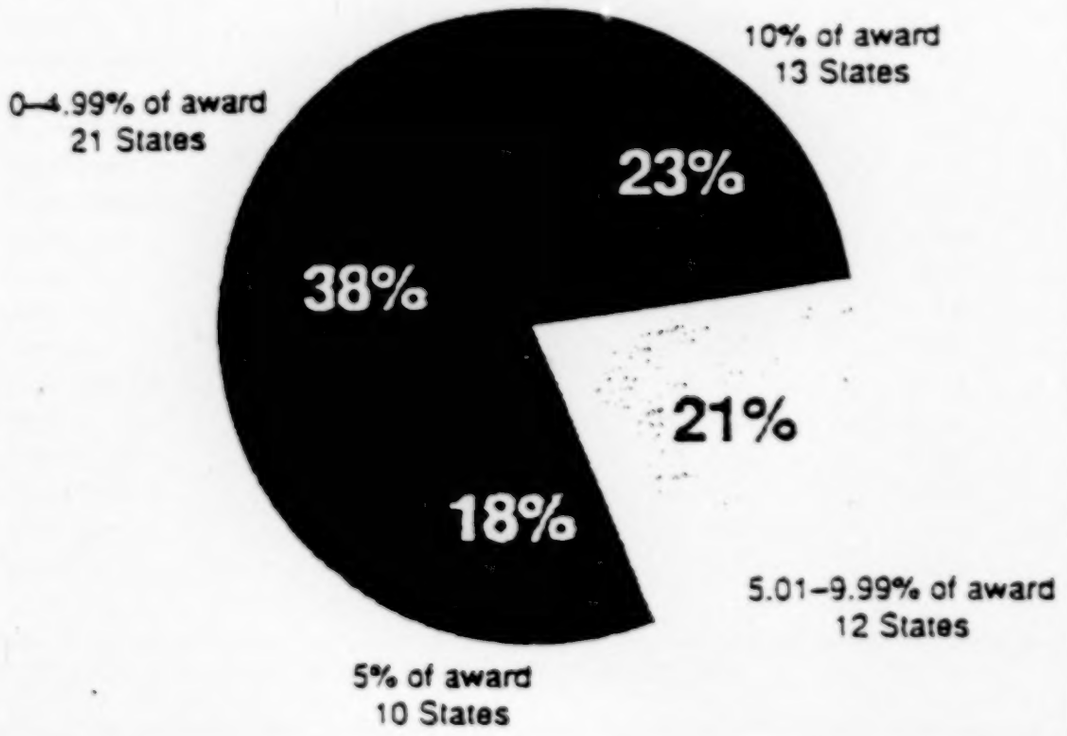


EXHIBIT 4

Drug Control and System Improvement Formula Grant

Fiscal Year 1993
State Allocations and Administrative Funds

State	Allocation	Administrative Funds	Percent Administration
Alabama	$6,884,000	$688,400	10.00
Alaska	1,870,000	187,000	10.00
American Samoa	794,620	79,462	10.00
Arizona	6,401,000	448,070	7.00
Arkansas	4,438,000	162,848	3.67
California	44,349,000	3,104,430	7.00
Colorado	5,870,000	481,340	8.20
Connecticut	5,747,000	197,784	3.44
Delaware	2,027,000	143,250	7.07
District of Columbia	1,910,000	191,000	10.00
Florida	19,977,000	891,151	4.46
Georgia	10,495,000	735,000	7.00
Guam	1,247,000	62,500	5.01
Hawaii	2,675,000	133,750	5.00
Idaho	2,538,000	253,800	10.00
Illinois	17,506,000	875,300	5.00
Indiana	9,052,000	452,600	5.00
Iowa	5,040,000	210,000	4.17
Kansas	4,613,000	90,000	1.95
Kentucky	6,349,000	317,450	5.00
Louisiana	7,117,000	427,020	6.00
Maine	2,817,000	129,957	4.61
Maryland	7,983,000	399,150	5.00
Massachusetts	9,602,000	720,150	7.50
Michigan	14,407,000	407,000	2.83
Minnesota	7,373,000	311,350	4.22
Mississippi	4,751,000	475,100	10.00
Missouri	8,408,000	336,320	4.00
Montana	2,209,000	89,000	4.03
Nebraska	3,328,000	76,500	2.30
Nevada	2,887,000	138,000	4.78
New Hampshire	2,632,000	131,600	5.00
New Jersey	12,115,000	844,285	6.97
New Mexico	3,263,000	326,300	10.00
New York	26,790,000	470,000	1.75
N. Mariana Islands	391,380	39,138	10.00
North Carolina	10,658,060	1,065,800	10.00
North Dakota	1,962,000	98,100	5.00
Ohio	16,645,000	1,182,250	7.10
Oklahoma	5,582,000	279,100	5.00
Oregon	5,221,000	522,100	10.00
Pennsylvania	18,102,000	799,458	4.42
Puerto Rico	6,076,000	303,800	5.00
Rhode Island	2,488,000	124,000	4.98
South Carolina	6,130,000	300,000	4.89
South Dakota	2,059,000	144,130	7.00
Tennessee	8,115,000	210,000	2.59
Texas	25,780,000	1,289,000	5.00
Utah	3,580,000	70,000	1.96
Vermont	1,865,000	70,400	3.77
Virgin Islands	1,203,000	120,300	10.00
Virginia	10,015,000	1,001,500	10.00
Washington	8,208,000	520,040	6.34
West Virginia	3,624,000	362,400	10.00
Wisconsin	8,118,000	257,600	3.17
Wyoming	1,713,000	0	0.00
TOTAL	$423,000,000	$23,745,983	

___ States continue to exceed passthrough requirements.

The statutory variable passthrough is the amount of program allocated funds that must be made available to local units of government. As administrative funds serve both State and local units of government, and expenditures are generally in the same proportion as those program funds, they are subtracted initially from the award, prior to calculating actual dollar amounts to be passed through.

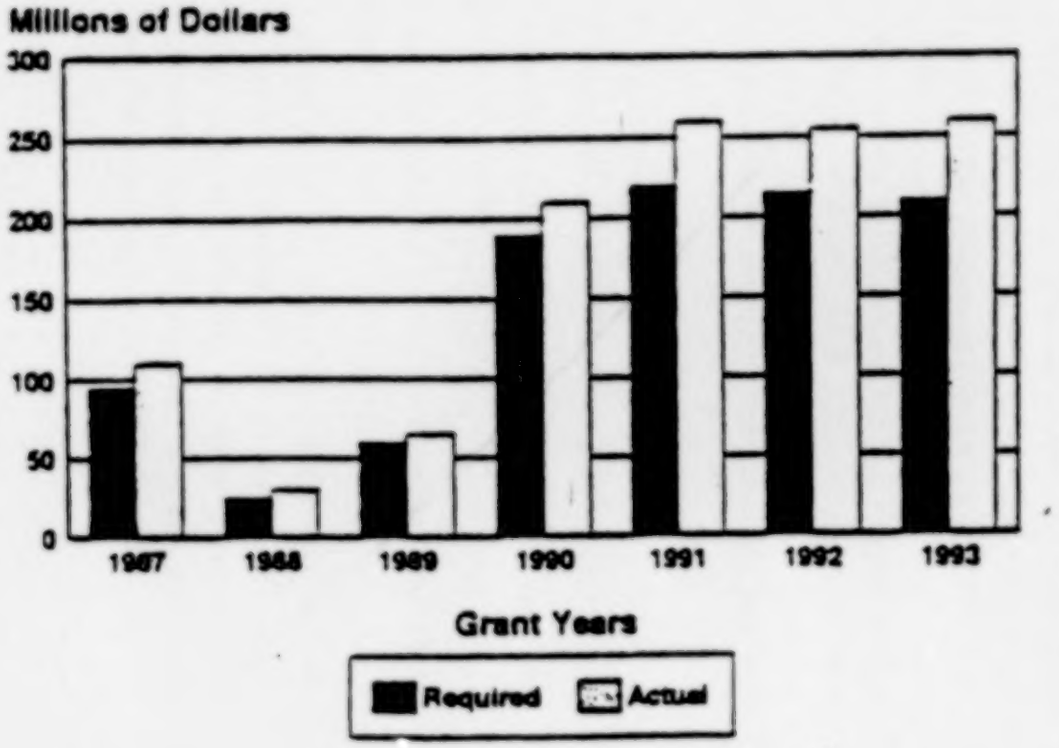
The minimum passthrough amount for each State is based on the percentage of funds expended for criminal justice purposes by local units of government relative to total State and local criminal justice expenditures in the State. These expenditures must be from a government's "own revenue source," e.g., taxes, charges and fees, utility revenue, and interest earnings. However, this requirement applies only to the 50 States. The District of Columbia, because of its designation as a local unit of government, is required to pass through 100 percent of its allocation. The five territories of Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Northern Mariana Islands have no passthrough requirement because of their single-level government structure.

Passthrough requirements for the 50 States range from a low of $369,755 (21.97 percent) in Alaska to a high of $4,963,634 (70.29 percent) in Minnesota, with the average being $4,343,597. Although all 50 States will meet the minimal requirement, 41 (82 percent) will surpass their required amount. This is consistent with previous years when States retained less funding for State-level projects and allocated more for projects to local units of government.

Fiscal year 1993 funding required that $217,179,867 be passed through to local jurisdictions, however, the States indicate that they will actually surpass this requirement by $42,374,216,for a total of $259,554,083. These figures indicate that, although States are permitted to retain an average of 45.60 percent of the allocation for the implementation of State-level programs, they are actually using an average of only 35 percent. Thus nationally, the majority of the funding (65 percent) is being used for the implementation of programs to specifically assist local units of government in their war against drugs and violent crime (exhibit 5).

EXHIBIT 5

Variable Passthrough
A Comparison: Required Versus Proposed



- Some states will exceed the 5 percent set-aside for criminal justice records improvement.

The Crime Control Act of 1990 amended the Omnibus Crime Control and Safe Streets Act to require each State receiving Edward Byrne Memorial State and Local Law Enforcement Assistance Formula Grant funds to allocate at least 5 percent of its total award for the improvement of criminal justice records. This requirement, which applied to the fiscal year 1992 and subsequent formula grant awards, is for improvements that include the following:

- Completion of criminal histories to include the final disposition of all arrests for felony offenses.
- Full automation of all criminal justice histories and fingerprint records.
- Frequency and quality of criminal history reports to the Federal Bureau of Investigation.

An analysis of information supplied by the States indicates that, although 38 States (67.85 percent) will minimally comply by setting aside the required 5 percent, 18 States (32.14 percent) intend to surpass this amount, with South Carolina designating up to 18.92 percent (exhibit 6).

EXHIBIT 6

State Allocations for Fiscal Year 1993
Criminal Justice Records Improvement

State	Allocation	Criminal History Allocation	Percent Set Aside
Alabama	$6,884,000	$344,200	5.00
Alaska	1,870,000	93,500	5.00
American Samoa	794,620	52,150	6.56
Arizona	6,401,000	320,050	5.00
Arkansas	4,438,000	221,900	5.00
California	44,349,000	2,217,450	5.00
Colorado	5,870,000	293,500	5.00
Connecticut	5,747,000	287,350	5.00
Delaware	2,027,000	325,000	16.03
District of Columbia	1,910,000	125,000	6.54
Florida	19,977,000	1,268,367	6.35
Georgia	10,495,000	524,750	5.00
Guam	1,247,000	135,000	10.83
Hawaii	2,675,000	133,750	5.00
Idaho	2,538,000	126,900	5.00
Illinois	17,506,000	875,300	5.00
Indiana	9,052,000	452,600	5.00
Iowa	5,040,000	252,000	5.00
Kansas	4,613,000	230,650	5.00
Kentucky	6,349,000	397,450	6.26
Louisiana	7,117,000	568,000	7.98
Maine	2,817,000	269,486	9.57
Maryland	7,983,000	399,150	5.00
Massachusetts	9,602,000	1,500,000	15.62
Michigan	14,407,000	720,350	5.00
Minnesota	7,373,000	368,900	5.00
Mississippi	4,751,000	250,000	5.26
Missouri	8,408,000	420,400	5.00
Montana	2,209,000	180,000	8.15
Nebraska	3,328,000	166,900	5.02
Nevada	2,887,000	144,350	5.00
New Hampshire	2,632,000	131,600	5.00
New Jersey	12,115,000	605,750	5.00
New Mexico	3,263,000	163,000	5.00
New York	26,790,000	1,339,500	5.00
N. Mariana Islands	391,380	19,569	5.00
North Carolina	10,658,000	1,532,900	14.38
North Dakota	1,962,000	98,100	5.00
Ohio	16,645,000	832,250	5.00
Oklahoma	5,582,000	279,100	5.00
Oregon	5,221,000	786,442	15.06
Pennsylvania	18,102,000	905,100	5.00
Puerto Rico	6,076,000	600,000	9.87
Rhode Island	2,488,000	124,400	5.00
South Carolina	6,130,000	1,160,000	18.92
South Dakota	2,059,000	102,950	5.00
Tennessee	8,115,000	405,750	5.00
Texas	25,780,000	1,489,000	5.78
Utah	3,580,000	275,000	7.68
Vermont	1,865,000	93,250	5.00
Virgin Islands	1,203,000	60,150	5.00
Virginia	10,015,000	500,750	5.00
Washington	8,208,000	410,400	5.00
West Virginia	3,624,000	181,200	5.00
Wisconsin	8,118,000	405,900	5.00
Wyoming	1,713,000	85,650	5.00
TOTAL	$423,000,000	$26,252,114	

___ Funding priorities remain relatively constant.

Consistent with the two prior years, fiscal year 1993 proposed priorities indicate that the greatest portion of the monies, $141,877,392 (33.54 percent), will go toward funding multijurisdictional task force activities.

Further analyses of data gathered through anticipated funding (Attachment A/Program List Workplan) and actual funding (Individual Project Reports) reveal that, since fiscal year 1991, States have constantly dedicated larger portions of their allocations to multijurisdictional task force activities, corrections programs, and programs to improve technology, including criminal justice information systems.

[Table Omitted In Printing]